

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

DATE: November 16, 2000

TO: Orange County Zoning Administrator

FROM: Planning and Development Services Department/Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA00-0087 Coastal Development Permit, Use Permit, Site Development Permit and Variance.

PROPOSAL: Coastal Development Permit to demolish an existing single-family dwelling and construct a new 10,100 square feet, multi-level single-family dwelling on a shoreline building site.

Use Permit to permit: 1) a detached guesthouse (beach cabana); and, 2) use of two kitchens in a single-family dwelling

Site Development Permit for grading of more than 500 cubic yards of material on a slope greater than 15 percent. The slope of the subject lot is greater than 30 percent, and grading is estimated at 4,300 cubic yards total cut and fill.

Variance to the development standards to allow: 1) a front setback of 9'-5" when a front setback of 11'-5" is required for this site; 2) a building height of approximately 43 feet at the rear of the structure when the height standard is 35 feet; and, 3) a rear setback of 22 feet for the guesthouse and pool equipment rooms when a setback of 25 feet is required.

LOCATION: In the community of Emerald Bay at 106 Emerald Bay, Laguna Beach. Fifth Supervisorial District

APPLICANT: Mr. and Mrs. Fred Kamgar, property owners
Stephan Slan, architect and agent

STAFF William V. Melton, Project Manager
CONTACT: Phone: (714) 834-2541 FAX: (714) 834-4652

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA00-0087 subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The subject site is an approximately 10,900 square feet beachfront property measuring 70 feet in width with an average depth of 153 feet. The property has an elevation drop of approximately 55 feet from the front of the property to the rear (beach side) for a slope of over 30 percent. The site is developed with a

multi-level, single-family dwelling, that according to the agent, was constructed in the 1950s. Mr. and Mrs. Kamgar, property owners are presently living in the house. The applicant proposes to demolish this home and construct a new 4-level, 10,100 square foot single family.

The proposed residence has 6 covered parking spaces and 4 open parking spaces in the driveway. Two covered spaces are in a standard two-car garage, with 4 additional covered spaces in a second garage providing tandem spaces (only two of these spaces conform to the County's off-street standards). The main structure has 6 bedrooms, 9 bathrooms and two kitchens. The main family kitchen is located on the third living level and a second smaller galley type kitchen is located on the first level. This level is the location of the outside living area and includes a terrace area, a pool, spa and lawn area. Under the lawn/terrace area at the rear of the house is a pool equipment structure and a beach cabana/guesthouse structure. The guesthouse is at a floor elevation of 18 feet above sea level while the fourth level of the main house is at an elevation of 75 feet above sea level. In order to construct the proposed single-family dwelling the applicant will be required to obtain approval of Coastal Development Permit, Use Permit, Site Development Permit and Variance as generally described in the Proposal Section above.

SURROUNDING LAND USE: (assumes Pacific Ocean is to the west)

Direction	Zoning	Existing Land Use
Project Site	R1 (Single-Family Residential (CD)	Single Family residence
North	R1 (Single-Family Residential (CD)	Single Family residence
South	R1 (Single-Family Residential (CD)	Single Family residence
East	R1 (Single-Family Residential (CD)	Single Family residence
West	OS (Open Space)	Emerald Bay community beach

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Also, since this proposal is for a Coastal Development Permit, notices of the hearing were sent to occupants in homes within 100 feet of the project site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to six County Divisions and the Emerald Bay Community Association.

As of the writing of this staff report, no comments raising issues with the project that could not be addressed through Standard Conditions of Approval have been received from other County divisions. The proposal received preliminary approval from the Emerald Bay Board of Directors on March 8, 2000.

CEQA COMPLIANCE:

Negative Declaration No. PA000087 (Exhibit 2) has been prepared for this proposal. It was posted for public review on September 21, 2000 and became final on October 11, 2000. Prior to project approval, the Zoning Administrator must find this ND adequate to satisfy the requirements of CEQA. Appendix A contains the required CEQA Finding.

DISCUSSION/ANALYSIS:

The proposal is subject to approval of four separate discretionary permits: a Coastal Development Permit, a Use Permit, a Site Development Permit and a Variance. Since the project site is located between the ocean and the first public highway (Pacific Coast Highway) a Coastal Development Permit is required for both the demolition of the existing home and construction of the proposed new home. Also, the proposal is “an appealable development” subject to appeal to the California Coastal Commission. The new home proposed conforms to the site development standards of the Emerald Bay CC&Rs.

Staff notes that this proposal is similar in scale to a home just recently approved on March 16, 2000 at 108 Emerald Bay, the site to the north, under Planning Application PA00-0206. That approval was to demolish an existing multi-level single family residence and construct a new 5-level 8,920 square foot single family dwelling. That proposal also included a Coastal Development Permit, a Variance to the front yard setback standard, a Use Permit for a guest house and a Site Development Permit for grading in excess of 500 cubic yards on a slope in excess of 15 percent.

A Site Development Permit is required for this proposal because of the grading required and the slope of the property. Since the site has an average slope greater than 15 percent and grading plans call for 4,300 cubic yards of cut with 220 cubic yards of fill, a Site Development Permit is required. The purpose of the grading is to “dig” the structures into the property in order to meet the strict Emerald Bay height limits required for this property. The large four level home will stair step down the slope and only the forth level with the two two-car garages will be above the street level. Staff did not notice any outstanding planning issues associated with this request. Standard conditions for grading and drainage should address any grading issues.

The reason for requiring a Use Permit is the applicant’s proposed 240 square feet beach cabana, i.e. guesthouse, located under the lawn/terrace area. The beach cabana includes a sleeping area and a bathroom. Since the cabana can accommodate overnight quests and the main dwelling unit is not internally attached, it is classified as a “guest house”. Guesthouses and second residential units are currently in the same category in the Zoning Code. However, it should be noted that the main difference between a second residential unit and a guesthouse is a second residential unit has a kitchen area and a guesthouse has no kitchen area. The proposed guesthouse has no kitchen area. Staff sees no issues with the proposed guest bedroom, i.e. guesthouse/cabana. As noted, a guesthouse was approved for the adjacent property at 108 Emerald Bay.

The Use Permit also serves to provides a vehicle to permit the use of a second kitchen in the main house. Because the house is on four levels and is large, a small galley type kitchen is proposed to be located on the first level. This level also contains the master bedroom suite, a gym, a guest bedroom with bath, and a sitting room. This floor level also provides the main access to the outdoor living area. Because the main

kitchen is located on the third level, the first level kitchen provides a food preparation area for the outdoor activities. In large houses, a smaller second kitchen area is often referred to as a “wet bar”; with a sink, small refrigerator and a microwave oven. A concern with a single-family residence with two fully equipped kitchens, is the possibility that the dwelling could be converted into a two-family dwelling. Staff does not believe that the house will be divided up into a duplex with the incorporation of a second small kitchen area on the first floor. Staff does not have any issues with this portion of the planning application request.

The requested height and setback variances should not affect any surrounding property owners and is consistent with other previously approved front yard setback variances. Regarding the front setback, because of setback averaging, the required front setback for this lot is just under 11’-6”. Staff notes that the front property line is back 7 feet to 20 feet from the actual edge of the street pavement. This is an unusual situation since the property line and street line are normally much closer together or the same line throughout Emerald Bay. While the proposed setback for the house is at 9’-6” from the front property line, it is setback a minimum of 29 feet to the edge of the street. The garages are also setback a minimum of 29 feet from the curb (18 feet minimum required). A setback of 5 to 6 feet from the edge of the street is a normal setback variance request in Emerald Bay. It appears to staff that the property owner is able to use this unused street right-of-way from the property line to the edge of the paved street for their own personal driveway. Staff does not have any issues with this portion of the variance request.

A second variance request is for the rear yard and the proposed beach cabana/guesthouse structure located in the rear setback area. Under the Zoning Code section relating to second residential units and guesthouses, Section 7-9-16.5 states that the structures shall not encroach into in required setback area. The required rear setback for this site is 25 feet; the applicant is requesting a rear yard setback of 22 feet. Under normal circumstances, staff would not support the request for a setback variance for a second residential unit/guesthouse. In this case, however, the guesthouse is mostly below grade, with only the entrance and a window opening to daylight. The guesthouse is only visible by persons using the community beach and is not visible from any other property. Staff does not have any issues with this portion of the variance request.

The third variance request is for building height. The property is in the R1 District zone permitting a building height of 35 feet as measured from finished grade. The front of the house is well below the maximum height permitted because of the height requirements imposed by the Emerald Bay CC&Rs. Because of the steep slope of the property, only a small portion of the home at the rear of the building exceeds the height limit. It appears to staff that only decks on the third level of the house violate the 35 feet height limit. The fourth level of the house is setback from the third level and is within the 35 feet height limit. The Emerald Bay Community Association approved the height of the structure. The approval of this portion of the Variance request should not create any negative impacts with surrounding property owners. Because the height variance request is for decks and not habitable living area, staff does not have an issue with this portion of the variance request.

Front and rear setback variance requests are common in Emerald Bay. Request for a height variance is not as common in Emerald Bay, but does occur on steep lots (more common in the northern section of Emerald Bay). Even though there does not appear to be issues with the variances proposed, State and County laws require that a variance application may be approved only if the approving agency makes the

variance findings listed below. If the Zoning Administrator can not make these findings, then the variance request must be disapproved.

1. *There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.*
2. *Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.*

Staff is of the opinion that the Zoning Administrator is able to make these two variance findings and approve the variance request portions of this proposal. The special circumstances required by finding 1 above is found in Appendix A, Finding No. 12. In conclusion, staff's review determined the applicant's proposed new single family dwelling, proposed grading, variance request and guesthouse are consistent with other beach front developments in this portion of Emerald Bay, especially the most recent approval at 108 Emerald Bay. Staff supports the applicant's proposal and makes a recommendation as follows.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA00-0087 for subject to the attached Findings and Conditions of Approval.

Respectfully submitted

C. M. Shoemaker, Chief
CPSD/Site Planning Section

WVM

Folder: D/Emerald Bay/PA00-00

APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

EXHIBITS:

- 1. Applicant's Letter of Explanation
- 2. Environmental Documentation
- 3. Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of 245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.

In addition, this project is within the Coastal Zone and is an "appealable development". Approval of an appealable development may be appealed directly to the California Coastal Commission (telephone number 562-560-5071), in compliance with their regulations, without exhausting the County's appeal procedures.



Appendix A

Findings

PA000087

1	GENERAL PLAN	PA000087
That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.		
2	ZONING	PA000087
That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.		
3	COMPATIBILITY	PA000087
That the location, size, design and operating characteristics of the proposed use will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity.		
4	GENERAL WELFARE	PA000087
That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.		
5	PUBLIC FACILITIES	PA000087
That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).		
6	COASTAL DEVELOPMENT PERMIT 1	PA000087
That the development project proposed by the application conforms with the certified Local Coastal Program.		
7	COASTAL DEVELOPMENT PERMIT 2	PA000087
That the project conforms with the public access and public recreation policies of the California Coastal Act.		
8	COASTAL DEVELOPMENT PERMIT 3	PA000087
That the approval of this application will result in no modification to the requirements of the certified land use plan.		
9	COASTAL DEVELOPMENT PERMIT 4	PA000087
That the approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan.		
10	NEGATIVE DECLARATION	PA000087 (Custom)

That in accordance with Section 21080(c) of the Public Resources Code and CEQA Guidelines Section 15074, Negative Declaration No. PA000087, which reflects the independent judgment of the lead agency, satisfies the requirements of CEQA and is approved for the proposed project based upon the following findings:

- a. The Negative Declaration and Comments on the Negative Declaration received during the public review process were considered and the Negative Declaration was found adequate in addressing the impacts related to the project; and
- b. There is no substantial evidence that the project, with the implementation of the mitigation measures, if any, which are included in the Negative Declaration, will have a significant effect on the environment.

11	SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR	PA000087
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That the subject project lies within the area of benefit of the San Joaquin Hills Transportation Corridor. In order to find this project consistent with the General Plan and to ensure that the traffic impacts have been adequately mitigated, it is necessary to adopt a condition requiring the developer to participate in the fee program adopted by the Board of Supervisors.

12	VARIANCE 1	PA000087 (Custom)
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That there are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations. The special circumstances are: the steep topography of the site and the restrictive Emerald Bay CC&Rs for building height.

13	VARIANCE 2	PA000087
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That approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.



Appendix B

Conditions of Approval

PA000087

1 CP CP NA BASIC/ZONING REG PA000087

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 CP CP NA BASIC/TIME LIMIT PA000087

This approval is valid for a period of 24 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3 CP CP NA BASIC/PRECISE PLAN PA000087

Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4 CP CP NA BASIC/COMPLIANCE PA000087

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

5 CP CP NA BASIC/OBLIGATIONS PA000087

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

6 CP CP NA BASIC/APPEAL EXACTIONS PA000087

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

7 SG SG GB DRAINAGE STUDY PA000087

Prior to the issuance of any grading permits, the following drainage studies shall be submitted to and approved by the Manager, Subdivision and Grading:

- A. A drainage study of the project including diversions, off-site areas that drain

onto and/or through the project, and justification of any diversions; and

B. When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and

C. Detailed drainage studies indicating how the project grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water retarding, will allow building pads to be safe from inundation from rainfall runoff which may be expected from all storms up to and including the theoretical 100-year flood.

8 SG SG GB DRAINAGE IMPROVEMENTS PA000087

A. Prior to the issuance of any grading permits, the applicant shall in a manner meeting the approval of the Manager, Subdivision and Grading:

- 1) Design provisions for surface drainage; and
- 2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and
- 3) Dedicate the associated easements to the County of Orange, if determined necessary.

B. Prior to the issuance of any certificates of use and occupancy, said improvements shall be constructed in a manner meeting the approval of the Manager, Construction.

9 F F B WATER AVAILABILITY PA000087

Prior to the issuance of a building permit, the applicant shall provide evidence of adequate fire flow. The Orange County Fire Authority Water Availability for Fire Protection form shall be signed by the applicable water district and submitted for approval to the Orange County Fire Authority. If sufficient water to meet fire flow requirements is not available, an automatic fire extinguishing system may be required in each structure affected by the insufficient fire flow.

10 F F RBU AUTOMATIC FIRE SPRINKLER PA000087 (Custom)

A. Prior to the issuance of a building permit, the applicant shall submit plans for any required automatic fire sprinkler system in any structure to the OCFA for review and approval.

B. Prior to the issuance of a certificate of use and occupancy, this system shall be operational in a manner meeting the approval of the Fire Chief.

11 F F B COMBUSTIBLE CONSTRUCTION LETTER PA000087

Prior to the issuance of a building permit for combustible construction, the builder shall submit a letter to the Fire Chief on company letterhead stating that water for fire-fighting purposes and the all weather fire protection access roads shall be in place and operational before any combustible material is placed on-site.

12 F F B BUILDING USE LETTER PA000087

Prior to the issuance of a building permit, the applicant shall submit a detailed letter of intended use for each building on-site to the Fire Chief for review and approval.

13 F F SB ARCHITECTURAL BUILDING PLANS PA000087

Prior to the approval of a site development/use permit or the issuance of a building permit, whichever occurs first, the applicant shall submit plans for the review and approval of the Fire Chief as indicated on the OCFA Plan Submittal Criteria form. Call the OCFA at (714) 744-0403 for a copy the Fire Safety Site/Architectural Notes to be placed on the plans prior to submittal.

14 SG SG G GEOLOGY REPORT PA000087

Prior to the issuance of a grading permit, the applicant shall submit a geotechnical report to the Manager, Subdivision and Grading, for approval. The report shall include the information and be in the form as required by the Grading Manual.

15 SG SG RG CROSS LOT DRAINAGE PA000087 (Custom)

Prior to the issuance of any grading permit, if determined necessary by the Manager, Subdivision and Grading, the applicant shall record a letter of consent from the affected property owners permitting offsite grading, cross lot drainage, drainage diversions and/or unnatural concentrations. The applicant shall obtain approval of the form of the letter of consent from the Manager, Subdivision and Grading Services before recordation of the letter.

16 BP BP G CONSTRUCTION NOISE PA000087

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permit s Services, that:

(1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.

(2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).

(3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.

17 SG SG B ROAD FEE PROGRAM PA000087 (Custom)

Prior to the issuance of building permits, the applicant shall pay fees for the Major Thoroughfare and Bridge Fee Program listed below, in a manner meeting the approval of the Manager, Subdivision and Grading.

a. San Joaquin Hills Transportation Corridor

18 SG SG G SIGHT DISTANCE PA000087

Prior to the issuance of any grading permits, the applicant shall provide adequate sight distance per Standard Plan 1117 at all street intersections, in a manner meeting the approval of the Manager, Subdivision and Grading. The applicant shall make all necessary revisions to the plan to meet the sight distance requirement such as removing slopes or other encroachments from the limited use area in a manner meeting the approval of the Manager, Subdivision and Grading Services.